

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GWENDOLYN COLE-HOOVER, as
Administratrix of the Estate of DAVID COLE,

Plaintiff,

14-CV-429-S

v.

UNITED STATES OF AMERICA,

Defendant.

NOTICE OF MOTION AND MOTION TO COMPEL
EXPERT DISCLOSURE AND FOR ORDER WITH RESPECT TO THE DEADLINE
FOR DEFENDANT'S EXPERT DISCLOSURE

PLEASE TAKE NOTICE, that defendant, United States of America, by its attorney, William J. Hochul, Jr., United States Attorney for the Western District of New York and Mary K. Roach, Assistant United States Attorney, hereby moves this Court for an order compelling plaintiff to provide her expert disclosure. Defendant also moves for an order providing that defendant's deadline within which to provide expert disclosure is July 14, 2016, the date set forth in the docket text for the Fourth Amended Scheduling Order. Defendant's motion is supported by the accompanying Affidavit of Mary K. Roach, Esq., dated July 5, 2016.

PLEASE TAKE NOTICE THAT the motion will be heard at the United States Courthouse, 2 Niagara Square, Buffalo, New York at a date and time to be set by the Court.

PLEASE TAKE FURTHER NOTICE THAT defendant intends to serve and file reply papers and, therefore, any papers in opposition to this motion are due at least fourteen days prior to the motion pursuant to Local Rule 7.1(c).

DATED: Buffalo, New York, July 5, 2016.

WILLIAM J. HOCHUL, JR.
United States Attorney

BY: s/MARY K. ROACH
Assistant United States Attorney
United States Attorney's Office
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AFFIDAVIT

**STATE OF NEW YORK)
COUNTY OF ERIE) ss:
CITY OF BUFFALO)**

MARY K. ROACH, being duly sworn, deposes and says:

- 1) I am the Assistant United States Attorney assigned to handle the defense of this case.
- 2) I make this Affidavit in support of the Government's motion to compel expert discovery in this case.
- 3) This is a medical malpractice action brought against the United States of America brought by Gwendolyn Cole Hoover as Administratrix of the Estate of David Cole.
- 4) By Notice to Produce dated January 2, 2015, defendant required plaintiff to produce: "[a]s to each expert who is retained to provide expert testimony, a written report

which conforms to the provisions of Fed. R. Civ. P. 26(a)(2)". A copy of the Notice to Produce is attached hereto as Exhibit A.

5) In Plaintiff's Response to Defendant's Notice to Produce #3, dated February 18, 2015, plaintiff responded that "[t]he plaintiff has not retained an expert at this time." A copy of Plaintiff's Response to Defendant's Notice to Produce is attached hereto as Exhibit B.

6) Pursuant to the Fourth Amended Scheduling Order, plaintiff's expert disclosure was due by May 2, 2016.

7) Plaintiff did not make her expert disclosure by May 2, 2016.

8) The Government requests an order compelling plaintiff to make such expert disclosure.

9) In preparing this motion, it came to my attention that there was a discrepancy as to the date by which defendant is to make its expert disclosure in the docket entry for the Fourth Amended Scheduling Order and the Fourth Amended Scheduling Order. The Docket Entry reads that defendant's expert disclosure is due by July 14, 2016, while the order provides that the Government's expert disclosure was due by June 14, 2016. Copies of these documents are attached hereto as Exhibit C.

10) In docketing the date by which defendant's expert disclosure was due, I relied upon the information in the docket text. It was not until today that I realized that there was a discrepancy in the dates. Defendant requests that defendant's expert disclosure be deemed

due by July 14, 2016, the date set forth in the docket text, and that the Court grant such other and further relief as to the Court seems just and proper.

s/MARY K. ROACH
Assistant United States Attorney

Subscribed and sworn to before me
this 5th day of July, 2016

s/CHERYL LOTEMPIO
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 6/30/2018